

July 10, 2018

Michael C. Robinson

Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA EMAIL BEFORE 5:00 P.M.

Mr. Denny Doyle, Mayor
City of Beaverton City Council
12725 SW Millikan Way
Beaverton, OR 97076

RE: Applicant's Final Written Argument; City of Beaverton File Nos. DI2017-0003,
APP 2018-0002 (Oregon Beverage Recycling Cooperative)

Dear Mayor Doyle and Members of the City Council:

This office represents Oregon Beverage Recycling Cooperative ("OBRC"). This letter is timely submitted on Tuesday, July 10, 2018 before 5:00 p.m. This letter constitutes the Applicant's final written argument in the above-referenced matter.

1. Introduction and Summary of Argument in favor of affirming the Director's Decision.

This is the Applicant's final opportunity to communicate with the City Council and the public about why the Director's Interpretation should be affirmed. The Applicant has three initial comments before explaining in more detail why the City Council can affirm the Director's decision and approve the application.

First, the Applicant appreciates the Director's support for the application and the Director's finding twice that the redemption center is a similar use to permitted uses in the Community Service ("CS") zone. The Director's decision is well-reasoned and is supported by substantial evidence in the whole record. The City Council is well within its discretion to affirm the Director's decision.

Second, the Applicant appreciates the testimony of all of its neighbors and other persons, including persons who use and benefit from the redemption center, the various social programs the center supports, and also the neighborhood associations. While it's clear that many persons support the application, as evidenced by the written and oral testimony in support of the application, it's also clear that many persons believe that the Applicant can do a better job of managing the center and external impacts from the center. The Applicant will commit to being as transparent as possible about the redemption center's operation and to aggressively respond to any and all timely complaints about the operation. The Director's proposed conditions of approval – which the Applicant will agree to – are appropriate and are feasible to be implemented.

Third, the redemption center is part of this state's long legacy of environmental stewardship. The record amply demonstrates that the redemption center is the most important and effective way that the state keeps beverage containers out of landfills and off of our streets. In order to function successfully, redemption centers like this one need to be located conveniently to the public and not in dangerous and inconveniently located industrial zoning districts. An industrial zoning district would not only be inappropriate, but would present a danger to individuals using the redemption center and would compete with industrial businesses for precious industrially-zoned ground.

The City Council can affirm the Director's decision for the following reasons:

- a. The Director correctly found that the approval criteria for the determination are satisfied by substantial evidence in the whole record. The redemption center is another business, just like the many other businesses allowed in the CS zone.
- b. The redemption center is not a recycling use. The center redeems beverage containers to return deposits to consumers, and prepares them for transport to plants where the containers are recycled. "Recycling" is turning something into a different product, which does not occur at this location. Further, the "back room" operations have been occurring for years at grocery stores in the CS zone, in addition to the actual redemption activity.
- c. The redemption center is not similar to uses allowed in the IND zone and because it is not a recycling use or other type of industrial use, it is inappropriate to direct it to the IND zone.
- d. If the redemption center is not allowed in the CS zone and is not an industrial use, then the City's citizens, who use and rely on the redemption center, will be deprived of a convenient location to redeem their beverage containers.
- e. Some activities described by and objected to by some of the redemption center's neighbors have already been addressed and can be further addressed through the implementation of the reasonable and feasible conditions of approval, including a "Good Neighbor Agreement", which will foster conversation between the redemption center and its neighbors. The conditions include, among other things, a sound-blocking wall on the east property line, a new insulated door at the loading door, an "air knife" to control odors at the front door, blocking the stairway on the west property line, additional security on the property during business hours and regular security patrols during other hours, a limitation on how long loading and unloading activities can occur (thus limiting the time during which the loading door is open and minimizing noise and odor from the loading door), obtaining a noise study that may contain other recommendations, and a commitment to promptly respond to all complaints.

The City Council has the authority to impose the conditions of approval and the City may enforce them. OBRC has been working closely with Staff on these conditions, which will be fully detailed in a Staff Report, and supports them.

- f. Other issues, like drug use, are clearly societal problems that will occur anywhere and are unrelated to the redemption center. For the sake of discussion, if those activities are linked to the redemption center, then moving the redemption center simply moves the undesirable activities rather than addressing them. But the City Council can find that the societal problems, including drug use, are not caused by the redemption center; the record shows that the City has had to address camping on public streets and the attendant problems associated with camping and that drug use occurs in many locations, including libraries. The solution is not to punish the innocent business owner who also wants to address the problem but to impose conditions of approval that allow the Applicant, its neighbors and the City, to address the issue and to assure that the business is not a location where such activities are tolerated. Even Jesuit High School, a respected member of the community, must police its property to avoid these incidents. This is no different than what is proposed for this use.
- g. The Redemption Center can and has responded to complaints when those complaints were brought to its attention but many if not most of the complaints in this record were not presented to the Applicant and it had no opportunity to correct them. The Applicant cannot be expected to respond to concerns that it is unaware of. It can and will be held accountable if the City Council adopts conditions of approval that mandate prompt responses to complaints. Further, the record shows that prior to the City Council hearing, no complaints were received by the Code Enforcement office and the Police Department had issued no citations. Further, the Police Department's report does not conclude that the redemption center is responsible for the small increase in the number of violations in the area nor that those incidents would not have occurred but for the redemption center's presence in the area.
- h. OBRC has a comment on the videos included in the record. The June 30 video shows the roll up door and the main door to the back of house operations open while not actively in use. Signage inside already tells employees to shut those doors when not actively in use. OBRC plans to install an automatic door to ensure that the door remains closed when not actively in use.

The July 1st video is obviously very concerning. These individuals are in a spot that makes it very difficult to see their activity from OBRC's cameras. This kind of activity is far too common in the community, and has a very negative effect on businesses, including ours. OBRC will commit to provide additional security to ensure this sort of behavior no longer occurs. Denying the application or requiring the use to be in another zone does not address the issue; it only shifts its

location. We should instead focus on how conditions can address these issues, like conditions of approval can do.

But, the better answer is that the drug use is unrelated to this beverage container redemption use or its location. It's a fact that drug use is all around use, in places like libraries and coffee shops. Drug users will not disappear from Beaverton or this area if the application is denied. It's unfortunate that the response to a video taken of private property didn't result in a call to OBRC to make it aware of the issue.

- i. Finally, this will be a decision that will leave some persons unhappy but the right conditions of approval will largely address their concerns. This CS zoned property will always have some impacts regardless of the use because of the proximity of residences to the property. The goal should be to approve the use with conditions that addresses identified issues. The correct and lawful action for the City Council to take is to affirm the Director's Decision because it meets the approval criteria with responsible and stringent conditions of approval that address the issues that City Council believe warrant addressing. A denial does not solve the problems identified that people are most concerned about and it does not provide the citizens with an appropriately located redemption center as intended by Oregon's Bottle Bill.

The remainder of this letter provides more detailed responses to issues raised in testimony to the City Council. This letter contains no new evidence.

2. Legal Conclusions

The Beaverton Development Code ("BDC") requires that, when a use does not clearly fall into one or more of the categories of uses permitted in Beaverton, the Planning Director must determine whether that use is permitted in the zone proposed for it.

"Authorization for Similar Uses. The Director may authorize that a use, not specifically named in the allowed uses, be Permitted if the use is of the same general type and is similar to the allowed uses; provided, however, that the Director may not permit a use already allowed in any other zoning district of this Code. Application for such a decision shall be processed as a Director's Interpretation, as provided by Section 40.25. of this Code."

BDC 10.50. (emphasis added).

In response to a remand order by the Oregon Land Use Board of Appeals ("LUBA"), OBRC applied for a Director's Interpretation to determine whether its Beaverton Redemption Center is permitted in the CS zone. As noted above, the Director's Interpretation is the proper and required process by which the City makes this determination; a legislative code amendment is neither necessary, nor appropriate.

The approval criteria for a Director's Interpretation are set forth in BDC 40.25.1.C; of these, the two substantive criteria are as follows:

“3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within the Development Code.

4. When interpreting that a use not identified in the Development Code is a Permitted, Conditional, or Prohibited Use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.”

There has been little debate in this Appeal that allowing the Redemption Center in a CS zone is consistent with applicable provisions of Beaverton's Comprehensive Plan (the “Plan”). Plan Goal 3.7.3 establishes the following policies for “Community Commercial” areas:

"a) Allow commercial uses at a range of scales, including large-format retail, to address community needs.

...

c) Prohibit land-intensive vehicle sales and service uses and uses requiring extensive outdoor storage.

d) Use development standards and/or conditional use review to address potential issues related to compatibility of commercial uses with adjacent housing, including noise, access and parking."

The Director and OBRC have provided substantial findings explaining why finding the CS zone to permit the Redemption Center is consistent with these and other provisions of the Plan. *See*, Application 13–16; Exhibit A of the April 30, 2018 Notice of Decision at 1-3; June 12, 2018 Staff Report at 4-5; OBRC June 11, 2018 Letter at 10–11.

The key legal issue in this Appeal is Criterion 4: whether the Redemption Center is “substantially similar” to other uses permitted in the CS zone. OBRC has offered substantial evidence to support a finding that Criterion 4 is met, which includes:

- A complete application, dated December 21, 2017, which explains why the City can find that the Redemption Center is substantially similar to a “service business or professional services use” and explains why allowing the Redemption Center in the CS zone is consistent with applicable goals and policies of the Comprehensive Plan;
- Photographic and written evidence demonstrating that the term “recycling center” is ambiguous and that the Redemption Center is not a “recycling center” as that term is properly construed in the BDC.

- A complete Transportation Impact Study, dated March 20, 2018, which demonstrates that the Redemption Center will not adversely impact the existing transportation system and is similar in terms of traffic generated to a variety of other retail and service uses;
- OLCC approval for the Redemption Center and its convenience area, dated December 9, 2016 (**Exhibit 1**);
- A map of the convenience zones for the Tigard and Beaverton Redemption Centers (**Exhibit 1**);
- A list of zoning designations of all redemption centers, which demonstrates that all but three are located in commercial or mixed-use zones;
- A Metro Solid Waste Facility License Application demonstrating the difference between an actual recycling center (Environmentally Conscious Recycling), which handles some 90,000 tons of mixed recyclables and organic debris per year, and the Redemption Center;
- A letter dated March 6, 2018 that explains why, in addition to finding that the Redemption Center is similar to a “service business or professional services use,” the Council can also conclude that it is substantially similar to the “retail trade” category;
- Examples of recycling centers and transfer stations, including the Hillsboro Landfill and Tualatin Valley Waste Recovery facility and Metro South Transfer Station; and
- Letter from Sen. Mike Dembrow and Rep. Ken Helm, chairs of the legislative committees responsible for the BottleDrop program, which explains that those committees understood the Redemption Centers to be commercial uses, not industrial uses.

The Director considered the evidence before her and found that the Redemption Center is “substantially similar” to other uses permitted in the CS zone for a number of reasons, which include the following:

- The Redemption Center is a new type of use recently created by the legislature (Exhibit A to Decision at 4);
- The Redemption Center does not fit within the use category of Salvage Yards, Recycling Centers and Solid Waste Transfer Stations because that use category denotes uses with a substantially higher external impact than the Redemption Center (Id. at 4–5);
- That the Redemption Center is not similar to other examples of recycling centers and transfer stations, and does not meet the City’s definition of “Salvage Yards” (Id.);
- That the Redemption Center is substantially similar to three use categories permitted in the CS zone, “Service Business and Professional Services,” “Eating and Drinking Establishments,” and “Retail Trade,” based on the following factors (Id. at 6–7):
 - The users or customers that the establishment services;
 - Noise, odors, and other potential impacts;
 - Whether the use is outdoors or enclosed; and
 - The volume and type of traffic generated by a use;
- In addition to the above, the Director observed that the “specific activity of beverage container redemption that takes place at the OBRC facility has been part of ordinary

grocery store operations since the bill was passed in 1971,” and that the Redemption Center is most similar in terms of its essential characteristics to a grocery store. *Id.* at 8.

In so doing, the Director applied Criterion 4 consistent with the purpose statement for the CS zone, which is to "provide for a variety of business types compatible with and of similar scale to commercial activities found principally along the City's major streets." BDC 20.10.10.2. Thus, the Director properly focused on whether the Redemption Center is of a “similar scale” and, based on its physical and operational characteristics, is “compatible with” other uses in the CS zone.

The Director never characterized her decision as an “impacts analysis,” but even if she had, there is nothing in the BDC that would prohibit an interpretation based on the physical and operational characteristics or “impacts” of a use. As explained in OBRC’s June 26 letter at 11–12, if one were to make any use that handles a recyclable material a “recycling center,” as Glenwood would have it, several permitted uses in the CS zone would now only be allowable with Conditional Use permits in the IND zone. At bottom, the Council can find that in the absence of any specific analytical methodology required by the BDC, the Director applied best planning practices by analyzing the elements of a land use that can be readily measured and that actually matter for land use purposes, such as the size of the Redemption Center, the type of customers it attracts, the traffic that it generates, as well as the need for convenient access to a bottle return in commercial areas.

In conclusion, the Director made a well-reasoned decision, and as described herein and in OBRC’s prior testimony, there is no basis upon which to reverse the Director’s decision. The Redemption Center is well supported – the Council heard a substantial amount of positive testimony and received a petition signed in support of the Redemption Center by hundreds of OBRC patrons. The Council should find that the Decision was correctly decided, but with the proposed conditions of approval and Good Neighbor Agreement, discussed above, it can also find that the Beaverton Redemption Center can continue to provide its important service while being a good neighbor.

3. Response to Arguments Raised by Glenwood 2006, LLC

In Mr. Connor’s July 3, 2018 letter, Glenwood 2006, LLC purports to respond to Applicant’s first open record response. However, Glenwood spends the vast majority of its ink repeating and repurposing arguments it raised during the hearing and before. Despite Glenwood’s escalating stridency, its July 3 letter has little, if anything, to add. It does, however, make a number of fallacious arguments that mischaracterize OBRC’s prior testimony, incorrectly defines the approval criteria, and attempts to misdirect the Council from fairly applying the approval criteria.

a. “OBRC has never taken the neighborhood complaints seriously.”

RESPONSE: Glenwood repeats its arguments that OBRC ignored it and is only now offering mitigation measures that Glenwood requested before. The Council should reject this argument for a number of reasons.

First, OBRC's specific dealings with Glenwood have no bearing on the approval criteria.

Second, this assertion is patently false. OBRC has spent countless hours attending meetings with neighborhood groups and Appellants, and corresponding with individuals who have contacted OBRC about the Redemption Center. These interactions were explained in detail in OBRC's June 26, 2018 letter.

Third, Glenwood is simply incorrect when it asserts that OBRC "never followed through on its agreement with the Bridgens." OBRC's mitigation proposals to the Bridgens (moving employee parking to the rear, installing additional sound proofing, and installing new fences) are virtually identical to the mitigation measures that OBRC proposed in its June 26 letter. Moreover, OBRC *did* install new window glass at the Redemption Center, as demonstrated by Exhibit 17 of OBRC's June 26 letter. It did not yet restripe the parking lot because ultimately, it was unclear that this would have any impact. The new fencing has not yet been installed because OBRC was initially advised by City staff that additional fencing would require a modification to its site design approval. Also, once the project was remanded by LUBA, OBRC was understandably reticent to spend additional money on further mitigation measures until this Appeal is resolved. However, new fencing is part of OBRC's proposed conditions of approval.

Finally, to the extent Glenwood previously requested many of the mitigation measures OBRC proposes, it is unclear why Glenwood would continue to object to the Application.

b. "The central question in this appeal is whether the BCRC qualifies as a Recycling Center."

RESPONSE: Glenwood again attempts to make the argument that whether the BCRC is a "recycling center" is the key issue in the appeal. On the contrary, it is not at all what the approval criteria require.

It is absolutely true that BDC 10.50 and 40.25 prohibit the Director from making a similar use determination for a use that is identified elsewhere in the zoning code. However, neither staff, OBRC, nor LUBA agreed with Glenwood that the Redemption Center fits within the use category "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations." This is for three reasons that have been fully explained in the record, and are summarized below:

First, there is no definition of "recycling center" in the BDC that would compel the City to find that the Redemption Center is permitted in another zone.

Second, the Oregon legislature deliberately defined the use as a "redemption center," and for good reason: unlike a "recycling center" that takes a wide variety of discarded materials for any purpose, a "redemption center" is a single-purpose facility. That purpose is to return deposits to people who return beverage containers, and redemption centers must be located in sufficiently close proximity to beverage retailers to make those container returns convenient. The Redemption Center can be compared to EcoBinary's specific-purpose facility, which the City apparently determined not to be a "recycling center" and which is also located in the CS zone.

Third, aside from the semantics of the word “center,” a redemption center cannot squarely be considered a “recycling center,” as that term is interpreted in the context of that use category; that is, even if a redemption center were a “recycling center” of some kind, is not the kind of recycling center that is similar to a “salvage yard” or “solid waste transfer station,” both of which are considered very high-impact uses.¹ This point is further supported by the fact that “Salvage Yards, Recycling Centers and Solid Waste Transfer Stations” are permitted in only one zone—IND—and even then, only with an approved conditional use permit. It strains credulity to suggest that a 10,000 square foot redemption center, which operates entirely indoors and is used by retail end-point customers, should require a *conditional use permit* to operate in the IND zone, which allows, among other things, warehousing, distribution, “fuel oil distributors,” “manufacturing, fabricating, assembly, processing, packing, and storage,” “heavy equipment sales,” and “wholesale or retail lumber, building and or landscaping materials yard” as uses permitted *outright*. CDC 20.15.20. There is simply nothing similar in scale, impact, or any other measurable attribute of the Redemption Center that makes it similar to a salvage yard, recycling center, or solid waste transfer station.

For the above reasons, the Council should reject Glenwood’s argument.

- c. “OBRC has been forced to repeatedly change its position on the legal standards for determining the nature of the use and the substantially similar test because its underlying claim is fundamentally flawed.”**

RESPONSE: The Council should reject this argument for several reasons.

First, such arguments fail to clearly address the approval criteria.

Second, OBRC has not “changed its position” on whether the Redemption Center is “substantially similar” to other uses identified in the CS zone, as required by CDC 40.25.15. OBRC has always asserted that these criteria are met. The fact that it explained throughout this process that the Council can find that the Redemption Center is substantially similar to both the “service business or professional services use” and “retail trade” categories lends further support to the Application, it does not detract from it. Moreover, there is nothing in either the BDC or state law that prohibits an applicant from offering multiple legal theories that may support its application.

Finally, many of Glenwood’s characterizations of OBRC’s arguments are disingenuous. First, OBRC did not “admit” that it conducts recycling on page 7 of its June 11, 2018 letter. But at any rate, such argument does nothing to prove that the Redemption Center is not substantially similar to other uses in the CS zone. Second, OBRC never “changed its position” regarding other regulatory definitions; it has always explained that other jurisdictions’ definitions of “recycling center” are not binding on the City. Third, Glenwood’s assertion that OBRC is “now backing off

¹ Courts have long interpreted meanings of words based on the surrounding terms in the same statute or ordinance by using the interpretive doctrine of “*noscitur a sociis*,” which roughly translates as “a word is known by the company it keeps.”

the impact-test” is a gross mischaracterization of ORBC’s prior testimony. The point that OBRC has made from the beginning is that the Redemption Center should be judged by its intrinsic aspects: its size, scope, traffic generation, compatibility with other commercial uses, etc. As a service that is required to be open to all, it should not be judged by the behavior of a small minority of people who might engage in petty nuisances.

Finally, Glenwood’s statement that the Redemption Center “meets the dictionary, regulatory and industry definitions of a recycling center is plainly false because it has failed to identify a single accepted dictionary, regulatory, or industry definition of “recycling center” that is binding on the City. In fact, it has failed to identify a dictionary definition or industry definition of “recycling center” at all.

d. OBRC failed to provide evidence to support the claim that the City treated grocery store recycling facilities as a retail use or that the BCRC is the same as these grocery store facilities.

RESPONSE: There can be no serious question that grocery stores have accepted and in some cases continue to accept returned beverage containers and refund deposits. There is also no question that retail trade, which includes grocery stores, is permitted in the CS zone.² As the Director explained, bottle returns have been part of grocery store uses since the beginning of the bottle bill and grocery stores are permitted in the CS zone.

Secondly, in making such an argument, Glenwood uses inconsistent, fuzzy logic. On the one hand, Glenwood has continually argued that it is the act of returning a bottle that should determine the use, and not the scale of that use or its similarity to other uses in the CS zone. *See, e.g.* Mike Connors letter, dated May 14, 2018 at 5 (“the similarity of the uses depends on the nature of the use itself, not just its size or impacts”). Now it argues that the Redemption Center is different than a bottle return in a grocery store precisely *because* of its size and impacts.

Putting aside Glenwood’s scattershot analysis of the issue, the fact that bottle returns have been a common feature in Beaverton’s commercial zones and the fact that the Redemption Center is similar in scale to other permitted commercial use categories are relevant to, and support, the Director’s Decision. The Council should reject Glenwood’s arguments for these reasons.

e. OBRC failed to provide evidence to dispute the appellants' evidence that the BCRC includes processing activity in the backroom area.

RESPONSE: Glenwood argues that “one of the key issues of contention is whether or not there is any processing activity taking place in the back of the BCRC.” That statement is simply incorrect. Again, regardless of whether the Council finds that there is “processing” occurring in

² See BDC 20.10.20. The BDC defined a “retail store” as “a place of sale to the ultimate consumer for direct consumption and not for resale.” BDC Ch. 90, pg. DF-44.

the back of the Redemption Center, that fact does nothing to disturb the Director's conclusion that the Redemption Center is "substantially similar" to other uses in CS zone.

And, the Council can find that the sorting and packaging of returned beverage containers is not the kind of "processing" that Glenwood implies. In fact, the inputs (unsorted bottles and cans) and outputs (sorted and crushed bottles and cans) are no different than the inputs and outputs of the bottle return machines that are common in grocery stores. The fact that these outputs are taken to OBRC's processing center for actual recycling after being deposited at its redemption centers belies the assertion that the Redemption Center is a recycling or processing center. Finally, the appearance of the equipment at the Redemption Center, which includes conveyor belts and other sorting machinery, does no more to make the Redemption Center an industrial use than does the mechanical equipment and conveyor systems behind the lanes at a bowling alley make a bowling alley an industrial use.

For these reason, the Council should reject Glenwood's argument.

f. "LUBA did not reject Glenwood's claim that the BCRC is a Recycling Center, LUBA remanded that issue to allow the City to consider it first."

RESPONSE: It is true that LUBA did not conclude that the Redemption Center is allowed in the CS zone and remanded the issue to the Council. However, Glenwood and Jesuit have both argued that the Redemption Center obviously meets a "plain language" definition of recycling center. The fact that LUBA did not agree contradicts Appellants' "plain language" argument.

g. "Glenwood's assertion that the City should address where BCRCs should be allowed in the City through a legislative amendment is not inconsistent with its position before LUBA."

RESPONSE: Glenwood ties itself into knots to argue that it did not really mean what it said when it argued before LUBA that a Director's Interpretation is necessary to allow the Redemption Center to continue its operations. The Council can summarily reject this argument because it is inconsistent with Glenwood's position before LUBA, but more importantly, because BDC 10.50 requires a director's decision in this instance, as explained above.

h. "The BCRC is an appropriate use in the IND zone."

RESPONSE: The issue in this case is whether the Redemption Center is "substantially similar" to uses permitted in the CS zone, not whether it is "substantially similar" to uses permitted in the IND zone. In fact, only if the Council concludes that the Redemption Center falls within the definition of "Salvage Yards, Recycling Centers and Solid Waste Transfer Stations" are the use allowances in the IND relevant at all.

Glenwood's assertion that OBRC operates its redemption centers in industrial zones in other jurisdictions is also incorrect in any relevant sense: of 25 redemption centers, only three are located in zones that allow industrial uses, and of those, two are co-located with OBRC's

recycling plants. The third is located in a mixed industrial/commercial zone that also allows “retail sales and services.” *See* Applicant’s June 11, 2018 Letter at Exhibit 2.

OBRC’s reasons for not wanting its Redemption Centers to be located in the IND are practical ones. First, the Redemption Center generates a relatively large amount of single-occupancy vehicle traffic, similar to a grocery store, that would certainly conflict with truck traffic in the City’s IND zone. Second, the legislature intends that redemption centers be close to bottle retailers to ensure that they are convenient for consumers, as explained in OBRC’s March 6, 2018 letter. Finally, the OLCC has already approved two convenience zones around the Redemption Center, which the OBRC would likely violate if it had to move the Redemption Center to an IND-zoned property, even assuming it could secure a different site (*see* OBRC’s January 12, 2018 letter at Exhibit 1). And, doing so would violate the many contracts OBRC has with Beaverton’s beverage retailers, as it testified at the June 19, 2018 hearing.

The Council should reject Glenwood’s argument for these reasons.

i. “Other uses in the CS zone have not generated near the level of complaints and opposition due to impacts after commencing operations.”

RESPONSE: Glenwood offers absolutely no evidence to support this argument, but even if it had, the argument is meaningless for two reasons. First, whether other businesses have generated complaints is irrelevant to the approval criteria. Second, according to the City’s code enforcement officer, there have been no official complaints registered against the Redemption Center as of June 11, 2018. *See* OBRC’s June 11, 2018 letter at Exhibit 4. OBRC recognizes that a number of individuals are concerned about undesirable people and behavior they believe to be attracted by the Redemption Center and to the extent that OBRC can take steps to ensure that its customers do not cause nuisances, it has offered take such steps as conditions of approval and a Good Neighbor Agreement. *See* OBRC’s June 26, 2018 letter.

The Council should reject Glenwood’s argument for these reasons.

4. Response to Arguments Raised by Jesuit High School, Brendan and Holli Bridgens and their family, Michael Matschiner, Joseph Conrad, Trisha McPharren and her family, and Rick Skayhan and his family (collectively, “Jesuit and Certain Individuals”)

Similar to Mr. Connor’s letter, Mr. Neff’s July 3, 2018 letter for the most part reiterates arguments already raised and addressed during the hearing and before. Nevertheless, what follows is a summary of each of Mr. Neff’s arguments followed immediately thereafter by OBRC’s response.

a. The Redemption Center creates “tangible negative externalities which are unlike and distinct from the externalities caused by other nearby operating businesses.”

RESPONSE: Putting aside the fact that Mr. Neff's argument does not address the relevant approval criteria, the record demonstrates that the City's code enforcement officer has indicated that there have been no official complaints registered against the Redemption Center. *See* OBRC's June 11, 2018 letter at Exhibit 4. Further, there is simply no evidence in the record that supports a claim that noise, odor, trash, trespassing, and the like are unique and distinct to the Redemption Center. Even so, OBRC recognizes that there are several neighbors, including the Bridgens, who have experienced unfortunate behavior from a few patrons of the Redemption Center. OBRC is committed to mitigating the negative externalities experienced by the neighbors, as evidenced by the Good Neighbor Agreement outlined above.

b. If the City Council adopts the Director's decision, they will set an "unfortunate precedent" that will allow siting of one or more redemption centers without City of Beaverton land use review or conditions of approval.

RESPONSE: Mr. Neff's concerns are overblown. Establishing a new Redemption Center will almost certainly require a new Type I Design Review, and the City may require conditions of approval for Type I applications. BDC 50.35(3)(D). And, if a new redemption center was to be sited in a new building, an applicant may need to go through a Type 2 or even a Type 3 review process, which would certainly provide the City with opportunities to require conditions of approval.

c. The City planner failed to consider that the Redemption Center is a "Recycling Center" and erroneously believed no processing would occur on site.

RESPONSE: First, the approval criteria do not require a determination of whether the Redemption Center is a "Recycling Center." But even if they did, for the reasons stated above, the Council should find that the Redemption Center is clearly not a "Recycling Center" – not in size, not in intensity, not in purpose.

Second, as explained in depth above, the Director's conclusion that the Redemption Center is "substantially similar" to other uses in the CS zone does not require a determination of whether "processing" is occurring in the back of the Redemption Center. More to the point, the sorting and packing of returned beverage containers is not the kind of "processing" occurring in OBRC's processing centers.

d. A legislative amendment should be enacted in order to approve OBRC redemption center locations.

RESPONSE: As explained above, BDC 10.50 states that a Director's Interpretation is required in this instance.

e. If the City Council follows staff's suggestion, it will encourage an approach that "greatly discounts public notice and involvement and a plain reading of the BDC."

RESPONSE: Mr. Neff states that “assuming [‘Recycling Center’] is ambiguous, the BottleDrop owners still completely ignore and fail to explain why they did not abide by BDC 40.25...” OBRC has not ignored or failed to explain this issue. In its letter dated July 3, 2018, OBRC explained that before the Redemption Center opened, both City staff and the applicant believed in good faith that the Redemption Center could be approved through a Type I Design Review and it was not until LUBA decided otherwise that there was any reason for either OBRC or the City to require a public approval process. Mr. Neff’s assertion also fails to recognize that the Council can easily find that Appellants have now had a thorough opportunity to be heard during this Appeal.

f. The Redemption Center must be analyzed as a principal use instead of an accessory use because it has characteristics different from reverse vending machines found in grocery stores.

RESPONSE: Like his July 3 Letter, Mr. Neff refers to an unrelated land use decision, which concerns the Beaverton Wal-Mart facility, to support his claim. That land use decision is not the subject of this Appeal. Furthermore, regardless of whether the redemption use at a grocery store is a primary or accessory use, it is an allowed use. OBRC acknowledges that more bottles are processed at the BCRC location than traditional grocery store redemption facilities, but the fact remains: the bottle redemption use has always been part of the uses allowed in the CS zone.

g. “The BottleDrop owners at no time have been willing to engage in a genuine discussion about voluntarily relocating the Beaverton BottleDrop.”

RESPONSE: Nothing in the BDC requires OBRC to voluntarily offer to relocate its premises. OBRC has invested tremendous resources in the Redemption Center and has many contracts with grocery stores in the surrounding area. As the petitions in the record illustrate, thousands of people in the surrounding area use the Redemption Center to redeem their bottle deposits and consider it part of their monthly routine. OBRC would never propose as a solution to the alleged problems that Appellants voluntarily relocate their businesses. Instead, OBRC believes the better solution would be to enter into a Good Neighbor Agreement, which the record demonstrates OBRC is willing to do.

h. The Redemption Center is fundamentally different from EcoBinary Electronics Recycling, Play It Again Sports, or Goodwill.

RESPONSE: In support of this argument, Mr. Neff states that OBRC identifies “three retailers of used products which they argue will need to move to the Industrial District if City Council determines BottleDrop is a Recycling Center. The BottleDrop Owners’ argument fails to account for the differences between operations at the BottleDrop and these retail establishments” See Mr. Neff’s letter dated July 3, 2018. This argument fails for two main reasons.

First, OBRC is not required to demonstrate that there are no differences between the Redemption Center and these businesses. Rather, it simply offered them as examples of other businesses—especially EcoBinary—that deal with reusable or recyclable material and are permitted in the CS zone.

Second, Council is not tasked with trying to determine whether there are perceived differences between uses in the CS zone. If that were the case, one could find that there are many fundamental differences between Starbucks and the neighboring tattoo parlor, but no one is suggesting that because differences between the two commercial businesses exist, that one should move to an IND zone. The key legal issue in this Appeal is Criterion 4: whether the Redemption Center is “substantially similar” to other uses permitted in the CS zone. As this letter demonstrates above, OBRC has offered substantial evidence to support a finding that Criterion 4 is met.

5. Conclusion

OBRC has provided substantial evidence and findings to support a Council decision affirming the application. The real issue animating Appellants is not that the Redemption Center fails to meet the criteria, but it is that certain property owners around the Redemption Center believe that it attracts undesirable people and behavior. However, it is simply not the case that these broader societal problems, which have long been a part of life in larger cities but are now reaching Beaverton, are caused by OBRC or that petty nuisances occurring in the neighborhood are intrinsic to the Redemption Center. There is also no evidence that forcing the Redemption Center to cease operations will be a solution to these problems, even as they manifest in this neighborhood. If the availability of beverage recycling facilities does draw individuals engaged in problematic behavior, moving the Redemption Center somewhere else will simply induce such individuals to congregate elsewhere.

Nevertheless, such concerns can be addressed in this application. OBRC takes neighborhood concerns very seriously and has been in close contact with its neighbors, both directly and through the Denny Whitford/Raleigh West Neighborhood Association. It offers conditions of approval and a Good Neighbor Agreement which it believes will address many, if not all, of Appellants’ concerns. Affirming the Director’s approval with these conditions in place will allow Beaverton’s residents to continue to use the Redemption Center while minimizing its impact on its neighbors.

Mr. Denny Doyle, Mayor
July 10, 2018
Page 16

For the above reasons, the Council should affirm the Director's decision with

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael C. Robinson", with a stylized, flowing script.

Michael C. Robinson

MCR:jmh

cc: Mr. John Andersen (*via email*)
Mr. Jules Bailey (*via email*)
Mr. Garrett Stephenson (*via email*)
Mr. K. C. Safley (*via email*)
Mr. Michael Connors (*via email*)
Mr. Michael Neff (*via email*)
Ms. Anna Slatinsky (*via email*)
Mr. Peter Livingston (*via email*)

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EXHIBIT 1



1120 NW Couch Street
10th Floor
Portland, OR 97209-4128

+1.503.727.2000
+1.503.727.2222
PerkinsCoie.com

January 12, 2018

Michael C. Robinson
MRobinson@perkinscoie.com
D. +1.503.727.2264
F. +1.503.346.2264

VIA EMAIL

Ms. Anna Slatinsky
Planning Division Manager
City of Beaverton
12725 SW Millikan Way
PO Box 475
Beaverton, OR 97076-4755

**Re: Director's Interpretation Application
City of Beaverton Case File No. DI2017-0003
Applicant's Second Set of Supplemental Application Materials**

Dear Anna:

This office represents Oregon Beverage Recycling Cooperative ("Applicant"), the applicant requesting a Community Development Director's Interpretation in City of Beaverton ("City") Case File No. DI2017-0003 ("Application"). Enclosed please find the following supplemental materials in support of the Application:

- Oregon Liquor Control Commission ("OLCC") Approvals for Applicant's Beverage Container Redemption Center ("BCRC") (Exhibit 1): These two documents reflect OLCC's determination that Applicant's BCRC satisfies all applicable State statutes and regulations and is approved to operate at 9307 SW Beaverton-Hillsdale Highway ("Property"), subject to enforceable conditions.
- Maps of the Convenience Zones for the Beaverton and Tigard Bottle Drop Redemption Centers (Exhibit 2): These maps identify the locations of Applicant's Beaverton and Tigard centers as well as the dealers (typically grocery stores) that are served by and participate in each center. Participating dealers are, subject to certain limitations, permitted to reject requests to redeem beverage containers at their stores (and to direct customers to the BottleDrop redemption centers where they may redeem their beverage containers). These maps are updated to

reflect the most recent list of dealers participating in each center and replace the maps Applicant submitted to the City with yesterday's letter.

Please include these materials in the official record for this matter. Feel free to contact me with additional questions or if you need additional information. Thank you for your attention to the points in this letter and its enclosures.

Very truly yours,



Michael C. Robinson

Enclosures

cc: Mr. Peter Livingston (via email) (w/encls.)
Mr. John Andersen (via email) (w/encls.)
Ms. Stephanie Marcus (via email) (w/encls.)
Mr. Seth King (via email) (w/encls.)

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Redemption Center)	ORDER APPROVING
Application filed by:)	REDEMPTION CENTER
)	
Oregon Beverage Recycling Cooperative)	
John Anderson, CEO)	
3900 NW Yeon Ave.)	
Portland, OR 97210)	
)	
Re: 9307 SW Beaverton Hillsdale Highway)	
Beaverton, OR 97005)	

BACKGROUND

Oregon Beverage Recycling Cooperative (OBRC or Applicant) submitted an application on October 18, 2016 for approval of a redemption center for the return of beverage containers under Oregon's Bottle Bill. The proposed redemption center (Center) is located at 9307 SW Beaverton Hillsdale Highway, Beaverton, Oregon. The application describes the intended operation of the Center and includes the information required under OAR 845-020-0025. The local governing body (City of Beaverton) has certified that the Center complies with local zoning and land use requirements.

OLCC staff conducted an investigation of the proposed application and prepared a written report. In connection with the investigation, public notices were posted at the proposed Center and at the retail stores (dealers) to be served by the Center. During the 30-day comment period, Staff received three timely comments from the public and one after the comment period closed (Exhibit 3). The comments expressed concerns that this location is not appropriate for a redemption center, is not convenient, is not properly zoned for a redemption center, and is not compatible with the surrounding uses.

FINDINGS

Based on the information contained in the application and staff's investigation, the Commission finds that the Center proposed by OBRC located at 9307 SW Beaverton Hillsdale Highway, Beaverton, Oregon will provide a convenient service to the public as required by ORS 459A.735, ORS 459A.737, and OAR 845-020-0020.

ORDER

OBRC's proposed redemption center at 9807 SW Beaverton Hillsdale Highway, Beaverton, Oregon is hereby approved subject to the following terms and conditions:

ORDER APPROVING REDEMPTION CENTER
Page 1 of 5

Exhibit 1

3 of 14

1. Dealers Served

The dealers served by and participating in the Center are:

ZONE 1 (0 – 2.0 miles) (all dealers are in Beaverton unless otherwise noted)

Bi-Mart #662, 4750 SW Western Ave	(0.5 miles from Center)
Target Store T-0344, 10775 SW Beaverton Hillsdale Hwy	(0.7 miles from Center)
Fred Meyer #285, 7700 SW Beaverton Hillsdale Hwy, Portland	(0.8 miles from Center)
New Seasons Market - Raleigh Hills, 7300 SW Beaverton Hillsdale Hwy, Portland	(1.0 miles from Center)
Fred Meyer #035, 11425 SW Beaverton Hillsdale Hwy	(1.2 miles from Center)
Trader Joe's #141, 11753 SW Beaverton Hillsdale Hwy	(1.2 miles from Center)
Natural Grocers U071, 12155 SW Broadway St	(1.5 miles from Center)
Rite Aid #5351, 5431 SW Beaverton Hillsdale Hwy, Portland	(1.9 miles from Center)
Albertsons #505, 5415 SW Beaverton Hillsdale Hwy, Portland	(2.0 miles from Center)
New Seasons - Cedar Hills, 3495 SW Cedars Hill Blvd	(2.3 miles from Center)*
Rite Aid #5322, 12575 SW Walker Rd	(2.4 miles from Center)*
Winco Foods 14, 3025 SW Cedar Hills Blvd	(2.4 miles from Center)*
Garden Home Thriftway, 7410 SW Oleson Rd, Portland	(2.7 miles from Center)*

* This dealer is located within the radius of the 2.0 mile convenience zone. The distance listed is the driving distance from the Center.

ZONE 2 (2.01 – 2.8 miles) (all dealers are in Beaverton unless otherwise noted)

Target Store T-0345, 9009 SW Hall Blvd, Tigard	(2.7 miles from Center)
Rite Aid #5356, 11190 SW Barnes Rd, Portland	(3.2 miles from Center)*
Rite Aid #5323, 14625 SW Allen Blvd	(3.3 miles from Center)*
Safeway Store #1073, 6194 SW Murray Blvd	(3.3 miles from Center)*
Market of Choice #2, 250 NW Lost Springs Ter, Portland	(3.8 miles from Center)*
Quality Food Centers QFC #202, 7525 SW Barnes Rd, Portland	(3.9 miles from Center)*

* This dealer is located within the radius of the 2.8 mile convenience zone. The distance listed is the driving distance from the Center.

2. Dealers not to be served

The following dealers are within the convenience zone of the Center but are not to be served by or are not participating in the Center. Beginning on the date the Center begins accepting containers, these dealers must 1) accept and pay the refund value of up to 350 beverage containers per person per day, 2) provide hand counting, 3) provide a 24-hour bag drop off service, 4) post a sign that contains the list of services

ORDER APPROVING REDEMPTION CENTER

Page 2 of 5

Exhibit 1

4 of 14

that must be provided by the dealer, and 5) provide two automated reverse vending machines or one reverse vending machine for each 500,000 beverage containers sold by the dealer in the previous calendar year, whichever is greater.

ZONE 1 (0 – 2.0 miles) (all dealers are in Beaverton unless otherwise noted)

Uwajimaya, 10500 SW Beaverton Hillsdale Hwy	(0.3 miles from Center)
Walgreens #05952, 7280 SW Beaverton Hillsdale Hwy, Portland	(1.0 miles from Center)

ZONE 2 (2.01 – 2.8 miles) (all dealers are in Beaverton unless otherwise noted)

Grocery Outlet of Beaverton, 8620 SW Hall Blvd	(3.1 miles from Center)*
--	--------------------------

* This dealer is located within the radius of the 2.8 mile convenience zone. The distance listed is the driving distance from the Center.

3. Kinds and Number of Containers Accepted

The Center shall accept all kinds of beverage containers that are subject to an Oregon refund value. The Center shall accept a maximum of 350 containers per person per day. Containers in excess of 350 per day shall be accepted from account holders and from fundraisers and others by special arrangements.

4. Total Capacity

It is expected that annual redemption volumes at the Center will meet or exceed the annual combined redemption volume experienced by the participating dealers over the past two years. The Center has sufficient capacity to meet these volumes.

5. Days/Hours of Operation

The Center shall be open and staffed seven days a week for a minimum of ten hours per day during June, July and August and for a minimum of nine hours per day during other months. During open hours, customers shall have the option of redeeming containers using reverse vending machines or by a hand count. In addition, the Center shall maintain 24-hour per day bag drop off service for account holders.

6. Payment Method and Redemption

The Center shall provide customers with the option of receiving cash payments for all returns made when the Center is open, up to a maximum of \$17.50 per person per day. Checks for larger amounts will be issued to fundraisers and others by prior arrangement. Customers shall also have the option of opening an account with OBRC to allow refund amounts to be credited to the customer's account. Customers shall have the ability to access their accounts at kiosks located at the Center and at

participating dealers for vouchers redeemable for cash or toward a purchase at any of the participating dealers.

7. Parking

The Center has a dedicated parking lot with 40 parking spaces for the commercial, stand-alone redemption center building.

8. Data Collection and Reporting

OBRC shall provide OLCC with quarterly reports showing the volume of beverage containers redeemed at the Center and how those amounts compare to the historic volumes of containers redeemed at the participating dealers. OBRC shall provide to OLCC quarterly reports showing the volume of containers redeemed by non-participating dealers within the two convenience zones as compared to the volume redeemed by these dealers in the preceding two years. OBRC shall also provide aggregate data showing the volume of containers returned at participating and non-participating dealers for up to a 10-mile radius on a quarterly basis.

9. Customer Satisfaction

OBRC shall conduct surveys of customer satisfaction with the Redemption Center from users of the Center and customers of the dealers served by the Center at least quarterly during the first year of operation and at least annually thereafter, and shall provide the results of these surveys to the OLCC. OBRC shall also report to OLCC on the nature and frequency of customer complaints received regarding the Center and what action is taken to address the complaints. Customer surveys and/or comment cards shall be available at the Center and at the participating dealers. OBRC shall meet with OLCC staff at staff's request to discuss the redemption center operation and to review data, in order to ensure that the Center is providing a convenient service to the public.

This Order may be withdrawn by the Commission at any time upon written notice to OBRC and the dealers named in this Order if the Commission finds there has not been compliance with this Order or if the Center no longer provides a convenient service to the public. OBRC shall have the right to a hearing to contest the proposed withdrawal of the Order.

Dated this 9 day of December, 2016.



Steve Marks
Executive Director
Oregon Liquor Control Commission

Mailed this 9 day of December, 2016.

THIS ORDER IS EFFECTIVE ON THE DATE MAILED.

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Redemption Center)	FOURTH AMENDED ORDER
Application filed by:)	APPROVING REDEMPTION CENTER
)	
Oregon Beverage Recycling Cooperative)	
John Anderson, CEO)	
3900 NW Yeon Ave.)	
Portland, OR 97210)	
)	
Re: 9307 SW Beaverton Hillsdale Highway)	
Beaverton, OR 97005)	

BACKGROUND

Oregon Beverage Recycling Cooperative (OBRC or Applicant) submitted an application on October 18, 2016 for approval of a redemption center for the return of beverage containers under Oregon's Bottle Bill. The proposed redemption center (Center) is located at 9307 SW Beaverton Hillsdale Highway, Beaverton, Oregon. The application describes the intended operation of the Center and includes the information required under OAR 845-020-0025. The local governing body (City of Beaverton) has certified that the Center complies with local zoning and land use requirements.

OLCC staff conducted an investigation of the proposed application and prepared a written report. In connection with the investigation, public notices were posted at the proposed Center and at the retail stores (dealers) to be served by the Center. During the 30-day comment period, Staff received three timely comments from the public and one after the comment period closed. The comments expressed concerns that this location is not appropriate for a redemption center, is not convenient, is not properly zoned for a redemption center, and is not compatible with the surrounding uses.

On December 9, 2016, the Commission issued an Order Approving Redemption Center. On December 22, 2016, the Commission received a request to add Uwajimaya as a participating dealer. On January 3, 2017, the Commission approved the request and issued an Amended Order. On April 19, 2017, the Commission received a request to add Beaverton Grocery Outlet and Walgreens #5952 as participating dealers. On April 26, 2017, the Commission approved the request and issued a Second Amended Order. On August 31, 2017, the Commission received a request to add 99 Ranch Market as a participating dealer. On September 5, 2017, the Commission approved the request and issued a Third Amended Order. On September 5, 2017, the Commission received a request to add Big Kmart #4455 as a participating dealer.

FINDINGS

Based on the information contained in the application and staff's investigation, the Commission finds that the Center proposed by OBRC located at 9307 SW Beaverton Hillsdale Highway, Beaverton, Oregon will provide a convenient service to the public as required by ORS 459A.735, ORS 459A.737, and OAR 845-020-0020.

ORDER

OBRC's proposed redemption center at 9807 SW Beaverton Hillsdale Highway, Beaverton, Oregon is hereby approved subject to the following terms and conditions:

1. Dealers Served

The dealers served by and participating in the Center are:

ZONE 1 (0 – 2.0 miles)

Bi-Mart #662, 4750 SW Western Ave	0.5 miles ¹
Uwajimaya, 1050 SW Beaverton Hillsdale Hwy	0.6 miles
Target Store T-0344, 10775 SW Beaverton Hillsdale Hwy	0.7 miles
Fred Meyer #285, 7700 SW Beaverton Hillsdale Hwy	0.8 miles
New Seasons Market - Raleigh Hills, 7300 SW Beaverton Hillsdale Hwy	1.0 miles
Walgreens #05952, 7280 SW Beaverton Hillsdale Hwy	1.0 miles
Fred Meyer #035, 11425 SW Beaverton Hillsdale Hwy	1.2 miles
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Winco Foods 14, 3025 SW Cedar Hills Blvd	2.4 miles
Garden Home Thriftway, 7410 SW Oleson Rd	2.7 miles

ZONE 2 (2.01 – 2.8 miles)

Beaverton Grocery Outlet, 8620 SW Hall Blvd	2.4 miles
Target Store T-0345, 9009 SW Hall Blvd	2.7 miles
Big Kmart #4455, 3955 SW Murray Blvd	2.8 miles
99 Ranch Market, 8155 SW Hall Blvd	3.2 miles
Rite Aid #5356, 11190 SW Barnes Rd	3.2 miles
Rite Aid #5323, 14625 SW Allen Blvd	3.3 miles
Safeway Store #1073, 6194 SW Murray Blvd	3.3 miles

¹ Distances listed are the driving distances to the Center. All dealers are located within the radius of their respective convenience zone.

Market of Choice #2, 250 NW Lost Springs Terrace	3.8 miles
Quality Food Centers QFC #202, 7525 SW Barnes Rd	3.9 miles

2. Dealers Not To Be Served

The following dealers are within a convenience zone of the Center but are not to be served by or are not participating in the Center. Beginning on the date the Center begins accepting containers, these dealers must 1) accept and pay the refund value of up to 350 beverage containers per person per day, 2) provide hand counting, 3) provide a 24-hour bag drop off service, 4) post a sign that contains the list of services that must be provided by the dealer, and 5) provide two automated reverse vending machines or one reverse vending machine for each 500,000 beverage containers sold by the dealer in the previous calendar year, whichever is greater.

ZONE 1 (0 – 2.0 miles)

G Mart, 3975 SW 114 th Ave	1.6 miles
Asian Food Center, 3849 SW 117 th Ave	1.8 miles

ZONE 2 (2.01 – 2.8 miles)

Cost Plus World Market, 10108 SW Washington Square Rd	4.4 miles
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3. Kinds and Number of Containers Accepted

The Center shall accept all kinds of beverage containers that are subject to an Oregon refund value. The Center shall accept a maximum of 350 containers per person per day. Containers in excess of 350 per day shall be accepted from account holders and from fundraisers and others by special arrangements.

4. Total Capacity

It is expected that annual redemption volumes at the Center will meet or exceed the annual combined redemption volume experienced by the participating dealers over the past two years. The Center has sufficient capacity to meet these volumes.

5. Days/Hours of Operation

The Center shall be open and staffed seven days a week for a minimum of ten hours per day during June, July and August and for a minimum of nine hours per day during other months. During open hours, customers shall have the option of redeeming containers using reverse vending machines or by a hand count. In addition, the Center shall maintain bag drop off service from 7:00 AM to 10:00 PM for account holders.

6. Payment Method and Redemption

The Center shall provide customers with the option of receiving cash payments for all returns made when the Center is open, up to a maximum of \$35.00 per person per day. Checks for larger amounts will be issued to fundraisers and others by prior arrangement. Customers shall also have the option of opening an account with OBRC to allow refund amounts to be credited to the customer's account. Customers shall have the ability to access their accounts at kiosks located at the Center and at participating dealers for vouchers redeemable for cash or toward a purchase at any of the participating dealers.

7. Parking

The Center has a dedicated parking lot with 40 parking spaces for the commercial, stand-alone redemption center building.

8. Data Collection and Reporting

OBRC shall provide OLCC with quarterly reports showing the volume of beverage containers redeemed at the Center and how those amounts compare to the historic volumes of containers redeemed at the participating dealers. OBRC shall provide to OLCC quarterly reports showing the volume of containers redeemed by non-participating dealers within the two convenience zones as compared to the volume redeemed by these dealers in the preceding two years. OBRC shall also provide aggregate data showing the volume of containers returned at participating and non-participating dealers for up to a 10-mile radius on a quarterly basis.

9. Customer Satisfaction

OBRC shall conduct surveys of customer satisfaction with the Redemption Center from users of the Center and customers of the dealers served by the Center at least quarterly during the first year of operation and at least annually thereafter, and shall provide the results of these surveys to the OLCC. OBRC shall also report to OLCC on the nature and frequency of customer complaints received regarding the Center and what action is taken to address the complaints. Customer surveys and/or comment cards shall be available at the Center and at the participating dealers. OBRC shall meet with OLCC staff at staff's request to discuss the redemption center operation and to review data, in order to ensure that the Center is providing a convenient service to the public.

This Order may be withdrawn by the Commission at any time upon written notice to OBRC and the dealers named in this Order if the Commission finds there has not been compliance with this Order or if the Center no longer provides a convenient service to the public. OBRC shall have the right to a hearing to contest the proposed withdrawal of the Order.

Dated this 6 day September, 2017.

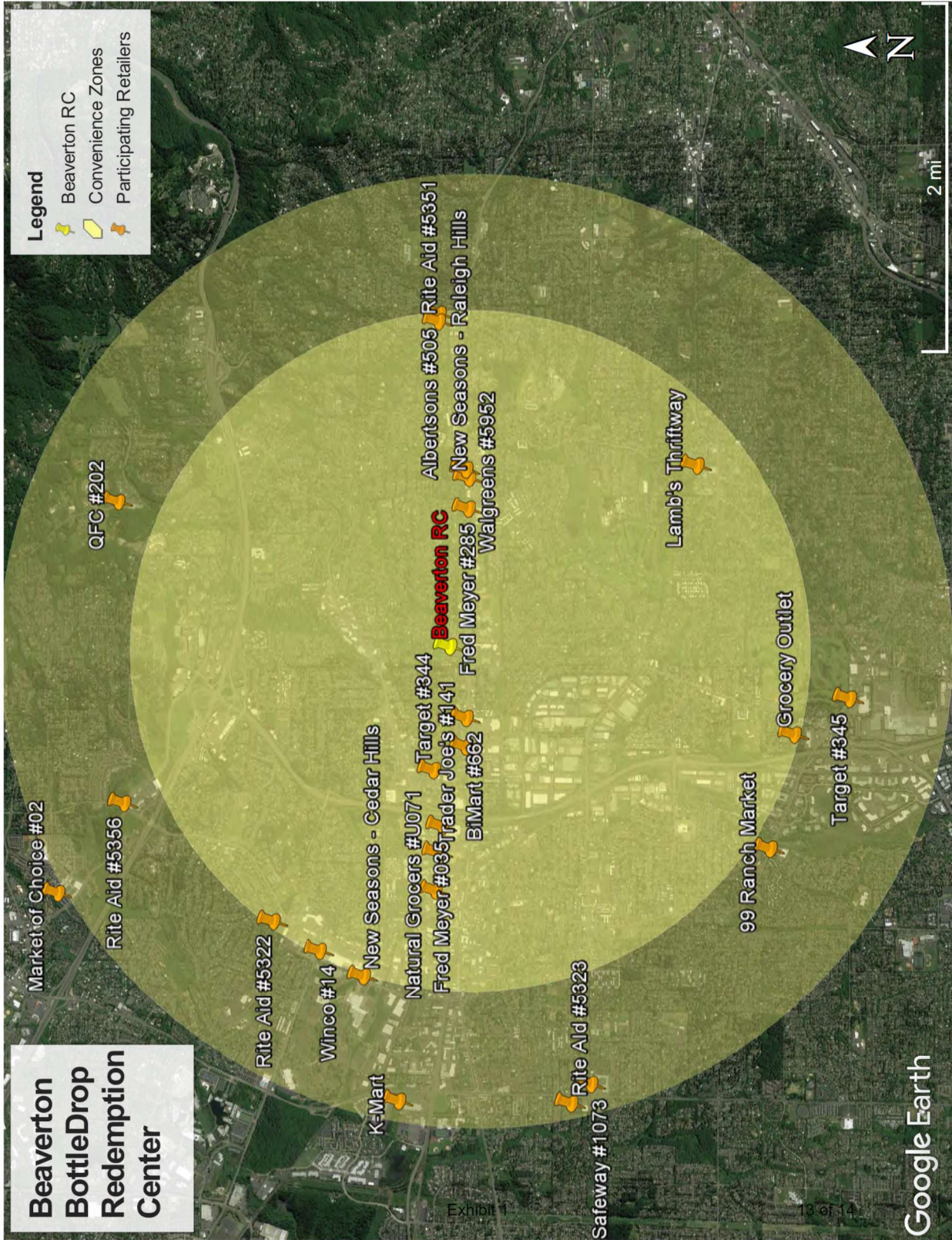


Steve Marks
Executive Director
Oregon Liquor Control Commission

Mailed this 6th day of September, 2017.

THIS ORDER IS EFFECTIVE ON THE DATE MAILED.

SM:BV



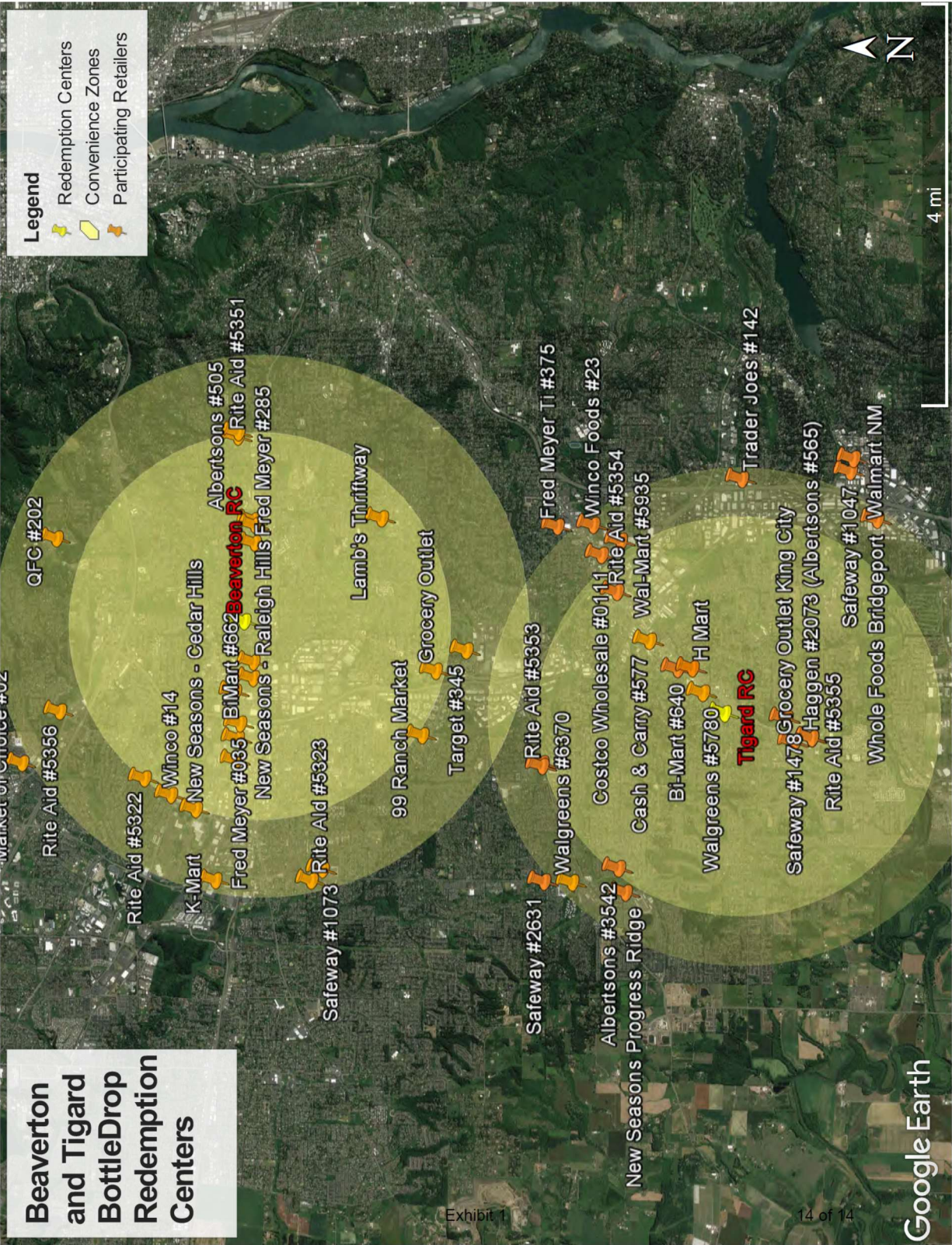


Exhibit 1

14 of 14